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| 09/787,945      | 06/26/2001  | Martin Bondo Jorgensen | 0459-0569P          | 1016             |

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EXAMINER

DABNEY, PHYLESHA LARVINIA

ART UNIT PAPER NUMBER

2643

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/787,945

Applicant(s)

JORGENSEN, MARTIN

Examiner

Phylesha L Dabney

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2001.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-6 and 8-18 is/are rejected.  
7) ☒ Claim(s) 7 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 26 June 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

This action is in response to the application filed on 26 June 2001 in which claims 1-18 are pending.

#### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “integrated circuitry” controlling means must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 11-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is not clearly understood how the numeral 5 “comma”0 represents the pressure force of the switch element.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-9, 13, 17-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Greenwood et al (U.S. Patent No. 5,365,593).

Regarding claims 1 and 11-12, Greenwood teaches a hearing aid comprising: a housing (12, 112, 212, 312, 412, 512) and means for controlling (10, 110, 210, 310, 410, 510) an operation mode of the hearing aid. Since the diameter of the attached controlling means is larger than the face of the in-the-ear hearing aid of Greenwood and is proximate portions of the auricle such that it would be adapted to be responsive to a force applied to a part of an auricle of an ear of a hearing aid user.

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Regarding claim 3, Greenwood teaches the housing is adapted to be placed within an ear canal of the ear (figs. 1-9).

Regarding claims 4 and 17, Greenwood teaches the controlling means comprise a stiff lever having two ends (figs. 1-9, specifically illustrated in fig. 9), one of which is “instantaneously” attached to a face part of the housing, the lever being adapted to be deflected by application of the force to the auricle, such as to a tragus, of the ear, and the controlling means being responsive to the deflection of the lever.

Regarding claim 5, Greenwood inherently teaches the lever is adapted to also be used by the user to remove the hearing aid from the ear canal (rim of lever).

Regarding claim 6, Greenwood inherently teaches the lever further comprises engaging means (rod; 18, 118, 248, 350, 460, 572) adapted to facilitate engagement with the hearing aid during removal.

Regarding claim 8, Greenwood teaches the controlling means comprises switching means (contacts; 24, 124, 224, 324, 452, 570) adapted to control the operation mode of the hearing aid, the switching means being responsive to the deflection of the stiff lever.

Regarding claim 9, Greenwood teaches the switching means comprises a momentary switch (contacts; 24, 124, 224, 324, 452, 570).

Regarding claim 13, Greenwood teaches the switching means are adapted to switch an electrical signal between two predetermined levels (contacts; minimum and maximum volume), the controlling means (figs. 1-9) being adapted to control the operation mode in response to a change in the electrical signal level provided by the switching means.

Regarding claim 18, as shown in fig. 1-9, Greenwood teaches a hearing aid adapted to be positioned within an ear canal of an ear of a user, the hearing aid (12, 112, 212, 312, 412, 512) comprising: means for manually removing the hearing aid from the canal, the removing means (10, 110, 210, 310, 410, 510) being fastened to the hearing aid and extending from the hearing aid toward an auricle of the ear, characterized in that the removing means (10, 110, 210, 310, 410, 510) comprise a stiff member (rod; 18, 118, 248, 350, 460, 572) adapted to remain in essentially the same predetermined position at least during normal deflection of the stiff member.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greenwood et al (U.S. Patent No. 5,365,593).

Regarding claims 10 and 14, Greenwood does not specifically teach the switching means comprising an on/off switch. However, the examiner takes official notice that it is known for volume control to include a range of zero (off) in addition to values greater than zero (on) for battery conservation. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include on/off capabilities in the invention of Greenwood for battery conservation.

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Regarding claim 15-16, Greenwood does not teach the controlling means being adapted to select a particular pre-set listening program between a number of pre-set listening programs in the hearing aid. However, it is known in the art to use more than one controlling means for selecting many operational features such as noise, volume, on-off, telecoil telephone receiver mode, or environmental control (listening programs). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use any number of controlling means in the invention of Greenwood for modifying the operational features of the hearing aid, so the hearing aid is useable in numerous environments, such as concerts.

#### ***Allowable Subject Matter***

Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phylesha L Dabney whose telephone number is 703-306-5415. The examiner can normally be reached on Mondays, Tuesdays, Wednesdays, Fridays 8:30-4 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz can be reached on 703-305-4708. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

August 17, 2004

PLD

  
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